

AN ACT FINANCING AN ACCELERATED STRUCTURALLY-DEFICIENT BRIDGE IMPROVEMENT PROGRAM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. To provide for an accelerated structurally deficient bridge improvement program, the sums set forth in sections 2 and 2A for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds, which sums are in addition to amounts previously appropriated for these purposes.

SECTION 2.

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS.

Department of Highways.

6033-0800 For the design, construction, reconstruction and repair of or improvements to bridges and approaches; provided, that expenditures from this item may include the costs of engineering, design, permitting and other services essential to these projects rendered by department employees or by consultants; provided further, that amounts expended for department employees may include salary and salary related expenses of these employees to the extent that they work on or in support of these projects; and provided further that no amounts appropriated under this item shall be expended for bridges or approaches owned by or under the control of the Massachusetts Turnpike Authority or the Massachusetts Bay Transportation Authority \$2,078,000,000

SECTION 2A.

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS.

Department of Conservation and Recreation.

2890-0800 For the design, construction, reconstruction and repair of or improvements to bridges and approaches under the control of the department of conservation and recreation; provided, that expenditures from this item may include the costs of engineering, design, permitting and other services essential to these projects rendered by department employees or by consultants; provided further, that amounts expended for department employees may include salary and salary related expenses of these employees to the extent that they work on or in support of these projects; and provided further that no amounts appropriated under this item shall be expended for bridges or approaches owned by or under the control of the Massachusetts Turnpike Authority or the Massachusetts Bay Transportation Authority \$906,000,000

SECTION 3. The first paragraph of section 20 of chapter 29 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- There shall be credited to the Infrastructure Fund 47.69 per cent of the receipts paid into the treasury of the commonwealth and directed to be credited to the Highway Fund under clause (a) of section 13 of chapter 64A. This amount, together with investments earnings thereon, shall be referred to as "special receipts" and shall be used in accordance with this section.

SECTION 4. Chapter 64A of the General Laws is hereby amended by striking out section 13, as so appearing, and inserting in place thereof the following section:-

Section 13. All sums received from the excise imposed on aviation fuel, and related penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under sections 7 and 7A, shall be credited to the Highway Fund and may be used for airport development projects approved and carried out at airports and landing facilities under 49 U.S.C. App. s 2210; and all other sums received under the excise imposed in section 4, and relative penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under said sections 7 and 7A, shall be credited as follows:- (i) 99.85 per cent shall be credited to the Highway Fund to be used for transportation-related purposes; and (ii) 0.15 per cent shall be credited to the Inland Fisheries and Game Fund, established by section 2C of chapter 131.

SECTION 5. Section 20 of chapter 86 of the acts of 2008 is hereby repealed.

SECTION 6. Chapter 6A of the General Laws is hereby amended by inserting after section 8B the following new section:-

Section 8C. (a) There shall be established a structurally deficient bridge improvement program coordination and oversight council. The council shall consist of a chair appointed by the governor, the secretary of

administration and finance, or his designee, the secretary of transportation and public works, the secretary of energy and environmental affairs, the commissioner of highways, the commissioner of the department of conservation and recreation and the commissioner of capital asset management and maintenance.

(b) the council shall coordinate and oversee the accelerated structurally deficient bridge improvement program including, without limitation:- (i) ensuring regular communication and coordination between the department of highways and the department of conservation and recreation as to their bridge development projects, programs and plans and any regulations or guidelines promulgated pursuant thereto; (ii) establishing and implementing project controls to ensure adequate tracking and reporting of program progress, cost and schedules; (iii) establishing an annual structurally deficient bridge improvement plan which shall include the number and location of bridges which shall be replaced or rehabilitated in the preceding year and the cost estimates of said replacement or rehabilitation; provided, however, that the council shall annually submit a report pursuant to this clause (iii) of subsection (b) not later than December 31st to the chairs of the house and senate committees on ways and means, the chairs of the joint committee on bonding, capital expenditures and state assets and the chairs of the joint committee on transportation; (iv) directing appropriate agencies to provide technical assistance as necessary to accomplish the objectives of the structurally deficient bridge improvement program; (v) coordinating and resolving any inconsistencies between capital investments made pursuant to the bridge improvement program and capital improvements made pursuant to the commonwealth's capital plan; and (vi) establish criteria for project selection relative to funding from the structurally deficient bridge improvement program.

(c) The council shall annually, not later than December 31st, submit a report of its activities to the chairs and ranking members of the house and senate committees on ways and means, the chairs and ranking members of the joint committee on bonding, capital expenditures and state assets and the chairs and ranking members of the joint committee on transportation.

(d) The council shall meet at least quarterly. The secretary of executive office of transportation shall provide personnel necessary to coordinate the activities of the council and to provide administrative support to the council, as requested.

SECTION 7. Notwithstanding any general or special law to the contrary and to meet a portion of the expenditures necessary in carrying out sections 2 and 2A, the state treasurer shall, upon request of the governor, issue and sell federal grant anticipation notes of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$1,108,000,000. Notes issued under this section shall be in addition to those notes previously issued under section 9 of chapter 11 of the acts of 1997 and under section 53A of chapter 29 of the General Laws to refund, in part, such previously issued notes. The notes authorized under this section shall be issued and may be renewed for such maximum terms as the governor may recommend to the general court in accordance with Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that the final maturity of such notes, whether original or renewal, shall be not later than June 30, 2027.

Notwithstanding any general or special law to the contrary, notes issued under this section and the interest thereon shall be special obligations of the commonwealth secured by the Federal Highway Grant Anticipation Note Trust Fund established in section 10 of said chapter 11 of the acts of 1997. Sections 10, 10A and 10B of said chapter 11 shall apply to the notes issued under this section in the same manner and with the same effect as set forth in said sections 10, 10A and 10B with respect to the notes previously issued under said section 9 of said chapter 11 of the acts of 1997 and said section 53A of said chapter 29 of the General Laws, except as otherwise provided in a trust agreement pertaining to the notes authorized under this section; provided, however, that any pledge of federal highway construction funds and other funds to secure the notes issued under this section, to the extent that those funds are subject to a prior pledge, shall be subordinate to the pledge of those funds to secure the outstanding notes issued under said section 9 of said chapter 11 and said section 53A of said chapter 29.

A trust agreement entered into with respect to notes authorized under this section shall be considered to be a trust agreement under said section 10B of said chapter 11 of the acts of 1997. The principal or purchase price of, redemption premium, if any, and interest on notes issued hereunder, fees and expenses related to those notes, deposits to reserves, if any, under such trust agreement or such credit enhancement agreement and any reimbursement amounts shall be considered to be trust agreement obligations for purposes of said sections 10A and 10B.

Notwithstanding any general or special law to the contrary, the commonwealth shall covenant with the purchasers and all subsequent owners and transferees of any notes issued under this section that while any note shall remain outstanding and any trust agreement obligation remains unpaid, federal highway construction trust funds shall not be diverted from the purposes identified in said section 10B, except as provided in the trust

agreement or credit enhancement agreement relating thereto, nor shall the trusts with which they are impressed be broken, and the pledge and dedication in trust of these funds shall continue unimpaired and unabrogated.

Notwithstanding any general or special law to the contrary, the trust and the Federal Highway Grant Anticipation Note Trust Fund, each established in accordance with said section 10 of said chapter 11, shall terminate on the date of the final payment or defeasance in full by the commonwealth of all trust agreement obligations under said section 10 and this act.

SECTION 8. To meet a portion of the expenditures necessary in carrying out sections 2 and 2A, the state treasurer shall, upon request of the governor, issue and sell special obligation bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$1,876,000,000. Bonds issued by the state treasurer under this section shall be issued as special obligation bonds under section 20 of chapter 29 of the General Laws. All special obligation bonds issued under this section shall be designated on their face, Special Obligation Commonwealth Accelerated Structurally-Deficient Bridge Improvement Loan Act of 2008 and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the General Court under Section 3 of Article LXII of the Amendments to the Constitution. All bonds issued under this section shall be payable not later than June 30, 2046. All principal and interest on special obligation bonds issued under this section shall be payable from the Infrastructure Fund established in said section 20 of said chapter 29 and shall be payable solely in accordance with said section 20 of said chapter 29.

SECTION 9. Notwithstanding any provision of section 7 or 8 to the contrary, the state treasurer shall, upon the request of the governor: (a) issue any portion of the amount authorized to be issued as federal grant anticipation notes under said section 7 as special obligation bonds in addition to the amount authorized in said section 8 and otherwise under said section 8; or (b) issue any portion of the amount authorized to be issued as special obligation bonds under said section 8 as federal grant anticipation notes in addition to the amount authorized in said section 7 and otherwise pursuant to said section 7; provided, however, that the aggregate amount issued under said sections 7, 8 and this section shall not exceed \$2,984,000,000; and provided further, that no bonds shall be issued under this section unless the governor and the state treasurer jointly determine that issuing bonds or notes under this section instead of as authorized under said section 7 or 8, as applicable, is necessary or is in the best financial interests of the commonwealth based on their consideration of: (i) the commonwealth's authority under federal law to issue federal grant anticipation notes pursuant to said section 7; (ii) generally prevailing financial market conditions; (iii) the impact of each financing approach on the overall capital financing plans and needs of the commonwealth; (iv) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds or notes proposed to be issued; and (v) any applicable provisions of chapter 29 of the General Laws.

SECTION 10. Notwithstanding any general or special law to the contrary, bonds or notes issued under sections 7 to 9, inclusive, shall not be included in the computation of outstanding bonds for purposes of the limit imposed by the second paragraph of section 60A of chapter 29 of the General Laws, nor shall debt service with respect to these bonds and notes be included in the computation of the limit imposed by section 60B of said chapter 29.

SECTION 11. (a) In implementing sections 2 and 2A, the executive office of transportation and public works, the department of highways and the department of conservation and recreation, hereinafter referred to as the agencies, may enter into such contracts or agreements as may be necessary or appropriate for the implementation of this act, including without limitation contracts or agreements with cities and towns or such other political subdivisions as may be necessary or appropriate to mitigate the effects of projects undertaken pursuant to this act or to otherwise carry out projects pursuant to this act. Such contracts or agreements shall contain minority business enterprise and women business enterprise participation goals and minority and women work force goals as determined by the secretary of administration and finance and the secretary of transportation and public works in accordance with state and federal law. Said contracts and agreements may relate to such matters as the agencies shall determine including, without limitation, the design, layout, permitting, bidding, procurement, construction, reconstruction or management of all or any portion of the projects to be funded in whole or in part with funds made available by this act and the extent to which management and oversight of the projects shall be coordinated between and among the agencies; provided, however, that nothing in this act shall relieve any party to such agreement from compliance with the procurement laws; provided further, that no integrated project organization or management structure shall be authorized pursuant to this act; and provided further, that no person employed by the commonwealth as a consultant pursuant to this act shall directly or indirectly set program policy or supervise a temporary or permanent employee of the commonwealth. Said agreements may also include provisions for the sharing of services

between and among the agencies, and such other reforms, efficiency initiatives or actions related to the projects that the agencies determines could result in operating cost savings or other benefits for the commonwealth and the agencies including, without limitation, eliminating or consolidating duplicative functions and facilities, sharing or coordinating equipment, expertise, personnel, bidding and procurement, and sharing resources, including administrative, financial, payroll, information technology, legal, engineering, human resources and other services; provided, however, that all such measures and agreements shall be submitted to the inspector general and state auditor no later than 14 days prior to the date of implementation or execution. Said agreements shall provide that all work undertaken on or with respect to any bridge or approach under the control of the department of conservation and recreation shall be carried out according to standards developed by the department of conservation and recreation to protect the scenic and historic integrity of the bridges and related infrastructure under its control. Said agreements shall also provide that the commissioner of conservation and recreation shall review and approve preliminary and final design plans to determine whether the plans are consistent with these standards. In relation to any agreements with cities, towns or other political subdivisions, the agencies may advance to such entities, without prior expenditure by such entities, monies necessary to carry out such agreements; provided, however, that the agencies shall certify to the comptroller the amount so advanced; and provided further, that all monies not expended under such agreement shall be credited to the account of the department from which they were advanced. The agencies shall report to the house and senate committees on ways and means on any transfers completed pursuant to this subsection.

(b) Subject to the contracts and agreements executed in accordance with this section and the other requirements of this act, the agencies shall adopt such consolidated bidding, procurement and permitting practices as may be convenient or necessary in carrying out this act; provided, however, that notwithstanding any general or special law to the contrary, the selection of engineering services shall be conducted pursuant to the procurement laws including, but not limited to, chapters 7, 30, 149 and 149A of the General Laws, and any other general or special law, regulation, ordinance or bylaw providing for the advertising, bidding or awarding of contracts for design, construction or improvement to property shall also apply; provided further, that such consolidated bidding, procurement and permitting practices shall not diminish or otherwise inhibit the participation goals for minority business enterprises or women business enterprises. Design build project delivery may be utilized for any such projects or multiple projects taken together without regard to the minimum cost of any project as provided in section 14 of said chapter 149A; provided, however, that if an agency utilizes design build project delivery for any project that falls below such minimum cost, the agency shall submit additional procedures governing such procurement to the inspector general for approval under subsection (d) of section 16 of said chapter 149A. The contracts for these services may also provide for the use of performance-based design, extended work hours, procurement that considers the value of accelerated project delivery in a manner consistent with this act and with procurement procedures that consider the value of accelerated project delivery but only after such procurement procedures have received the written approval of the inspector general and, in the case of federally-aided projects, the written approval of the Federal Highway Administration, lane rental costs, bonus payments and penalties for performance and other measures aimed at accelerating project delivery.

(c) The secretary of the transportation and public works shall establish an interagency working group which shall consist of the assistant secretary for access and opportunity, the executive director of the state office of minority and women business assistance, the executive director of the affirmative market program, the director of labor, the director of civil rights within the executive office of transportation and public works, the director of affirmative action within the executive office of transportation and public works, a representative of the affirmative market program within the division of capital asset management and maintenance and, in consultation with the commissioner of conservation and recreation, a representative of said department, the inspector general, the state treasurer and the state auditor. The interagency working group shall develop and oversee efforts to ensure minority business enterprise and women business enterprise participation and the minority and women work force participation goals established pursuant to the contracts or agreements of subsection (a) and adherence to state advertising, bidding and procurement laws.

SECTION 12. Notwithstanding any general or special law to the contrary, any appropriated amounts funded from the proceeds of bonds that are to be expended for the general purpose of designing, constructing, maintaining and repairing highways, roadways, boulevards, parkways bridges and approaches other than those monies authorized by this act shall be transferred to the Transportation Deferred Maintenance Trust Fund established in section 69A of chapter 10 of the General Laws and expended in accordance with that section. The comptroller shall make the transfers required by this section from the accounts, in the amounts and at the times directed by the secretary of

administration and finance. To the extent sufficient appropriations exist therefor, the governor shall make every effort to provide for at least 20 per cent of the total bond-funded expenditures in each fiscal year for the department of highways' statewide road and bridge program and for improvements to the department of conservation and recreation's roadways, boulevards, parkways and bridges exclusive of bond-funded expenditures under sections 2 and 2A, to be applied to the general purpose of designing, constructing, maintaining and repairing of highways, roadways, boulevards, parkways bridges and approaches in accordance with this section.

SECTION 13. Section 61 to 62I, inclusive, of chapter 30 of the General Laws, chapter 91 of the General Laws and section 40 of chapter 131 of the General Laws shall not apply to the repair, reconstruction, replacement or demolition by the department of highways, pursuant to section 2, of existing state highway or municipally-owned bridges, including the immediate approaches necessary to connect the bridges to the existing adjacent highway or rail system, in which the design is substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced; provided, however, that the provisions of said section 61 and said sections 62 to 62I, inclusive, of said chapter 30 shall apply to the repair, reconstruction, replacement or demolition project where such project requires a mandatory environmental impact report pursuant to 301 CMR 11.00; provided further, that all such work shall be subject to the requirements of the then current edition of the department of highways' Stormwater Handbook as approved by the department of environmental protection in accordance with applicable law, that notice shall be published in the Environmental Monitor of any application to the department of environmental protection for a water quality certification, and that said work shall be subject to performance standards prescribed by the department of environmental protection pursuant to section 401 of the Federal Clean Water Act, if applicable; and provided further, that notwithstanding the foregoing, the said section 61 and said sections 62 to 62I, inclusive, of said chapter 30, said chapter 91 and said section 40 of said chapter 131 shall apply to any portions of the bridge and roadway approaches to the crossing of the Charles river for the Central Artery/Tunnel Project.

If a state highway or municipal bridge crosses over a railroad right-of-way or railroad tracks, the department of highways shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the bridge; provided, however, that the department of highways and their agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for purposes that the department of highways may consider necessary or convenient for the administration of this section. If a flagman is needed to administer this section, the railroad company or its assigns shall provide the flagman.

For the purposes of this section, "bridge" shall include, but not be limited to, any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility or other area.

Any project exempt from said section 61 and said sections 62 to 62I, inclusive, of said chapter 30, said chapter 91 or said section 40 of said chapter 131 pursuant to this section shall be subject to the public consultation process required by the then current version of the Project Development and Design Guidebook of the department of highways.

SECTION 14. Nothing in this act shall be construed to transfer any lands, roadways, boulevards, bridges, approaches or other facilities under the care, custody or control of the department of conservation and recreation.

SECTION 15. Notwithstanding any general or special law to the contrary, a private entity engaged in a construction, development, renovation, remodeling, reconstruction, rehabilitation or redevelopment project receiving funds pursuant to this act shall properly classify individuals employed on the project and shall comply with all laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes and income taxes with respect to all such employees. All construction contractors engaged by an entity on any such project shall furnish documentation to the appointing authority showing that all employees employed on the project have hospitalization and medical benefits that meet the minimum requirements of the connector board established in chapter 176Q of the General Laws.

SECTION 16. The council shall submit a report on the progress and all expenditures related to the bridge projects specified to be completed in this act and any other department of highways bridge projects that may not be authorized through this act to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation and the joint committee on bonding, capital expenditures and state assets. The report shall include, but not be limited to: the total amount appropriated for each project, the total estimated cost of each project, the amount expended for the planning and design of each project up to the time the report is filed, the amount expended on construction of each project up to the time the report is filed, the timeline from advertisement through contract award and from the start of actual design and construction

by the design build team to project completion, the time saved, if any, by employing the design build procurement method; and whether, in the opinion of the council with consultation from the commissioner of highways, design build was an effective procurement method for each project; the total amount currently expended on each project, the estimated lifetime maintenance schedule and cost of each project, the original estimated completion date of each project and the current anticipated completion date of each project. This report shall also include the total number of employees and outside contractors and amount expended on salaries and benefits for employees and outside contractors that are specifically working on projects to be carried out as part of the accelerated bridge repair program. The report shall be submitted on June 30 and December 31 of each year for a period of 8 years after the effective date of this act.

SECTION 17. The council shall establish and implement project controls to ensure that projects carried out under this act shall be done in the most efficient possible manner. The council shall create an internal project controls function to oversee all such work. Section 29A of chapter 29 of the General Laws shall be complied with in all respects. In connection with such oversight, the council shall file a report with the chairs of the house and senate committees on ways and means, the house and senate chairs of the joint committee on transportation and the house and senate chairs of the joint committee on bonding, capital expenditures and state assets a report not later than December 15, 2008 and every 2 years for the life of the authorizations within this bill detailing the internal project controls referred to above. In addition, the financing of and expenditures under the program shall be subject to a joint public oversight hearing conducted by the joint committee on transportation and the joint committee on bonding, capital expenditures and state assets not less than two times per year.

SECTION 18. The following reforms contained in chapter 86 of the acts of 2008 shall apply to the projects performed with funds made available pursuant this act: a reporting system to track periodic and substantial completion estimates pursuant to section 12, expedited notices to proceed pursuant to section 13 and provisions pertaining to contracts or agreements between agencies.

SECTION 19. (a) Not later than November 30, 2008, the council shall file with the clerks of the house of representatives and the senate, the joint committee on transportation, the joint committee on bonding, capital expenditures and state assets and the house and senate committees on ways and means a bridge preservation and repair plan for calendar years 2009 to 2011, inclusive. The plan shall include the cost estimates and the scope of work to be performed on specific bridges for each year, as well as the key annual milestones, cost estimates and work to be performed for all bridges for which funds will be allocated but for which completion will require multiple years.

(b) Not later than October 31, 2011, the council shall submit to the clerks of the house of representatives and the senate, the joint committee on transportation and the joint committee on bonding, capital expenditures and state assets a report documenting whether: (i) based on the bridge preservation and repair plan submitted pursuant to subsection (a), at least 90 per cent of those bridges expected to be completed in 2009, 2010 and 2011 have been completed on time and on budget; and (ii) based on the bridge preservation and repair plan submitted pursuant to said subsection (a), at least 90 per cent of the milestones for each bridge for which funds have been allocated in 2009, 2010 and 2011, but for which completion requires multiple years, have been achieved on time and on budget.

SECTION 20. The secretary of administration and finance, in consultation with the state treasurer and the commissioner of revenue, shall submit, not later than October 31 of each year during which projects funded under this act are ongoing, to the clerks of the house of representatives and the senate the house and senate committees on ways and means and the joint committee on bonding, capital expenditures and state assets a report establishing that the commonwealth's current fiscal condition, debt structure and bond ratings will not be adversely affected by commencement of projects to be funded by bonds authorized in section 8. The report shall contain an analysis by the department of revenue, based on a semi-annual review, of gas tax revenue collections.

Approved August 4, 2008.